

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

GUILLERMO TRUJILLO CRUZ,

Plaintiff,

v.

BALLESTEROS,

Defendant.

Case No. 1:20-cv-00124-AWI-BAM (PC)

ORDER DENYING MOTION FOR LEAVE
TO PROCEED *IN FORMA PAUPERIS* ON
APPEAL

(ECF No. 28)

Plaintiff Guillermo Trujillo Cruz (“Plaintiff”) is a state prisoner who proceeded *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983.

On February 18, 2020, the assigned Magistrate Judge issued findings and recommendations recommending that Plaintiff’s application to proceed *in forma pauperis* be denied on the basis that Plaintiff is subject to 28 U.S.C. § 1915(g) and that his allegations do not satisfy the imminent danger exception. (ECF No. 11.) Those findings and recommendations were adopted in full on September 9, 2020, and the undersigned ordered Plaintiff to pay the \$400.00 filing fee in full to proceed with this action. (ECF No. 20.) Following Plaintiff’s failure to pay the filing fee within the specified time, on October 9, 2020, this action was dismissed, without prejudice, for Plaintiff’s failure to comply with the Court’s order and his failure to pay the filing fee. (ECF No. 26.) Judgment was entered accordingly the same date. (ECF No. 31.)

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On October 26, 2020, Plaintiff filed a notice of appeal together with a motion to proceed *in forma pauperis* on appeal. (ECF Nos. 27, 28.) Pursuant to Federal Rule of Appellate Procedure 24(a)(2), Plaintiff's motion to proceed *in forma pauperis* on appeal is denied for the reasons discussed below.

As the Court has previously found, Plaintiff is subject to 28 U.S.C. § 1915(g), which provides that "[i]n no event shall a prisoner bring a civil action . . . under this section if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury."¹

The Court did not find that the allegations in Plaintiff's complaint satisfied the imminent danger exception to 1915(g), (ECF Nos. 11, 20), and Plaintiff has included no allegations in his notice of appeal indicating that he was in imminent danger at the time the notice of appeal was filed. See Williams v. Paramo, 775 F.3d 1182, 1189 (9th Cir. 2015) (a three-strikes prisoner may be required to demonstrate an imminent danger at the time the notice of appeal is filed in order to proceed in forma pauperis on appeal).

Accordingly, Plaintiff's motion to proceed *in forma pauperis* on appeal, (ECF No. 28), is
HEREBY DENIED.

IT IS SO ORDERED.

Dated: October 30, 2020



SENIOR DISTRICT JUDGE

¹ The Court takes judicial notice of the following United States District Court cases: (1) Trujillo v. Sherman, Case No. 1:14-cv-01401-BAM (E.D. Cal.) (dismissed on April 24, 2015 for failure to state a claim), aff'd, Case No. 15-15952 (9th Cir. May 6, 2016); (2) Trujillo v. Ruiz, Case No. 1:14-cv-00975-SAB (E.D. Cal.) (dismissed on January 6, 2016 for failure to state a claim), aff'd, Case No. 16-15101 (9th Cir. December 15, 2017); and (3) Cruz v. Gomez, Case No. 1:15-cv-00859-EPG (E.D. Cal.) (dismissed on February 3, 2017 for failure to state a claim), aff'd, Case No. 17-15358 (9th Cir. October 25, 2017).

The Court also takes judicial notice of the following United States Court of Appeals case: Trujillo v. Gonzalez-Moran, Case No. 17-15200 (9th Cir.) (dismissed on August 21, 2017 as frivolous).